

ORDER

U.S. DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION

1600.38C

5/8/96

SUBJ: EMPLOYEE AND OTHER INTERNAL SECURITY INVESTIGATIONS

1. PURPOSE. This order states policy for the investigations program under the auspices of the Associate Administrator for Civil Aviation Security, ACS-1. It updates responsibilities and procedures to agree with recent ACS organizational changes. This order provides FAA management and FAA employees with specific responsibilities relative to the investigations described in this order, and it also implements appendix 1, Order DOT 8000.5, Office of the Inspector General Investigative Procedures.
2. DISTRIBUTION. This order is distributed to the branch level in Washington headquarters, regions, and centers with a standard distribution to all FAA field offices and facilities.
3. CANCELLATION. Order 1600.38B, FAA Investigations Program, dated October 27, 1987, is canceled.
4. EXPLANATION OF CHANGES. The title of this order has been changed to better describe its contents. In addition, this order:
 - a. Updates the responsibilities and procedures affected by the new Civil Aviation Security (CAS) organizational structure including the Associate Administrator for Civil Aviation Security, ACS, and the Office of CAS Operations.
 - b. Adds new appendices which include material previously contained in the text.
 - c. Expands the definitions portion.
 - d. Updates and expands authorities and responsibilities.
 - e. Expands the policy paragraph.
5. DEFINITIONS.
 - a. Department of Transportation/Office of Inspector General(DOT/OIG) Liaison Official. Pursuant to Order DOT 8000.5, DOT/OIG Investigative Procedures, the liaison official is the office or individual who is designated as the contact to act as the interface between FAA and DOT/OIG. ACS-1 is the designated liaison official for the FAA.

b. Enforcement Investigative Report (EIR). An EIR is official documentation of a regulatory investigation. The procedures and documentation for regulatory investigations are accomplished in conformity with the latest edition of Order 2150.3, Compliance and Enforcement Program.

c. Investigation. An investigation is a planned, systematic search for facts and evidence collected through interviews, record examinations, and the application of other approved investigative techniques. The purpose is to gather all evidence necessary to substantiate or refute allegations or issues that could result in regulatory, administrative, civil, or criminal action.

d. Management Officials. Management officials are persons in a position to hire, direct, assign, evaluate, promote, transfer, furlough, layoff, discipline, or remove employees.

e. Preliminary Inquiry/Investigation. The preliminary inquiry/investigation is a series of logical steps taken to determine the reliability and credibility of information which has been obtained to enable the servicing security element (SSE) manager to determine whether an investigation should be conducted and if it is within the jurisdiction of the FAA.

f. Report of Investigation (ROI). An ROI is an official document containing the results of an administrative, civil, regulatory, or criminal investigation which has been completed by a special agent and signed by the SSE manager. The ROI is accomplished in conformance with the latest edition of Order 1600.20, the Civil Aviation Security Investigations Handbook.

g. Servicing Security Element (SSE). The SSE is the Civil Aviation Security Division or staff having investigative jurisdiction over matters contained within this order. These elements are located at the regional level and at the Mike Monroney Aeronautical Center, as the CAS Divisions (-700), the SSE at the Technical Center is the Civil Aviation Security Staff, ACT-8. The SSE serving at FAA headquarters is the Investigations Division, ACO-300.

h. Special Agent. A special agent is an FAA civil aviation security employee to whom credentials have been issued which designate the holder as a duly accredited special agent.

6. AUTHORITY TO CHANGE THIS ORDER. The Associate Administrator for Civil Aviation Security, ACS-1, is authorized to issue changes to this order which do not affect policy, delegation of authority, or assignment of responsibilities.

7. POLICY. The FAA investigative policy is as follows:

a. General. FAA management officials and employees shall provide optimum support to ACS-1 in the execution of FAA's investigations program conducted in compliance with provisions of the Federal Aviation Act (FAAAct) of 1958, Sections 103, 301, 313(a) through 313(c), 501, 602, 605, 901, 902, and 1002(b) as amended; the Transportation Safety Act of 1974, 49 U.S.C 1808, 1809, and 1810; and the FAA Drug Enforcement Assistance Act

of 1988, 49 U.S.C. 1472 et al. Authorized administrative, criminal, and regulatory investigations shall be conducted as necessary and appropriate. FAA special agents shall be granted access to FAA records, information, and witnesses as required. Requests for access to classified information shall be governed by existing FAA directives. No FAA employee, except those issued credentials by ACS-1, shall use the term special agent.

b. Inappropriate Subject Matter. Investigations shall not be initiated nor special agents be utilized for any of the following:

(1) A substitute for employee counseling or other appropriate personnel management actions.

(2) Matters where sufficient facts are already known and adequately documented to take needed actions.

(3) Matters susceptible to and/or more appropriately dealt with by administrative solutions, i.e., formal inquiry, survey, or audit.

(4) Minor incidents or issues of on-the-job accidents, negligence, incompetency, small personnel claims, improper supervision, failure to comply with general work regulations, and insubordination, which fall within the category of matters that should normally be handled by the supervisor and frequently can be resolved on site with minimal inquiry.

8. TYPES OF FAA INVESTIGATIONS. ACS special agents conduct investigations pertaining to administrative, civil, regulatory, or criminal matters, based on information which has been received or gathered. Special inquiries are conducted as requested or needed.

a. Administrative. The majority of administrative cases pertain to the hiring and continued employment of FAA personnel. These cases support the FAA's personnel security program. Examples are found in Appendix 1, Administrative Investigative Material. See paragraph 10a.

b. Civil. Tort claim cases are examples of civil cases investigated by the SSE. These cases most frequently involve claims being filed against the FAA for the recovery of damages, usually monetary. Upon request, investigative assistance is given to the Offices of the Chief Counsel and Assistant Chief Counsels to investigate the circumstances surrounding tort claims in order to protect the FAA from false or spurious claims. See paragraph 10a.

c. Regulatory. Suspected violations of pertinent portions of the Code of Federal Regulations (CFR) are investigated by the SSE. Examples are found in Appendix 2, CFR Investigative Material. Example: the SSE shall initiate regulatory actions based on investigative findings in those cases involving airmen and/or aircraft involved in the transportation of illegal drugs. See paragraph 10a.

d. Criminal Violations.

(1) Title 49 violations. ACS is responsible for conducting investigations of certain

criminal violations. These criminal violations are set forth in the FAA Act and codified in Title 49 of the U.S. Code. Examples are found in Appendix 3, Criminal Investigative Material. See paragraph 10a.

(2) Title 18 violations. Regulatory investigations may involve potential criminal violations of the U.S. Federal Criminal Code, commonly called Title 18. When the SSE discovers potential Title 18 violations not under its authority to investigate and not under the sole jurisdiction of another Federal agency, or when the case has been declined by the agency with primary jurisdiction, the SSE shall present the investigative information to the U.S. attorney. Preliminary investigation of these potential violations may lead to a referral or to the conduct of an investigation by SSE personnel. The SSE shall seek the assistance of the Office of the Chief Counsel or appropriate Assistant Chief Counsel in these cases.

(3) State Criminal Violations. FAA investigations may disclose information of potential criminal violations of state laws. As appropriate, the SSE may consult with the state prosecutive attorney to present potential prosecutive referrals. The SSE shall seek the assistance of the Office of the Chief Counsel or appropriate Assistant Chief Counsel in these cases.

e. Special Investigations. There may be occasions when the SSE's receive a request to assess a situation or incident which relates, in some manner, to FAA's employees, functions, or responsibilities. Managers and employees are encouraged to discuss any incident with the SSE, especially those situations which raise questions of impropriety or are of concern to the employee. Similar requests may be initiated by local or Federal government offices. Requests which do not clearly fall within the investigative areas discussed in this order and for which some investigative work is accomplished may be considered special investigations. See paragraph 10a.

9. INVESTIGATIVE RESPONSIBILITIES OF ACS. Based on the ACS investigative responsibilities under the various Acts listed in paragraph 7a, ACS is recognized as a criminal justice agency pursuant to 28 C.F.R. Part 20, Criminal Justice Information Systems. This recognition has been documented in letters received from the Department of Justice. ACS is responsible for conducting criminal, as well as administrative and regulatory, investigations of matters which are reported to ACS and within FAA jurisdiction. See paragraph 10a.

a. The Associate Administrator for Civil Aviation Security, ACS-1. ACS-1 on behalf of the Administrator has oversight and is responsible for:

(1) Conducting criminal, administrative, and regulatory investigations on issues which are reported to ACS and which are within FAA jurisdiction.

(2) Referring those investigative cases not found to be within the ACS investigative scope to the responsible agencies having jurisdiction.

(3) Conducting liaison with law enforcement agencies at the international, Federal, state, and local levels.

(4) Conducting liaison with the various offices of the DOT/OIG.

b. The Office of CAS Operations, ACO-1. The director has oversight and is responsible for:

(1) Initiating preliminary investigations, conducting investigations, and making appropriate law enforcement referrals.

(2) Exercising direct line authority for the FAA investigations program over the regional SSE's and ACO-300.

(3) Serving as the FAA focal point at the national level for liaison with Federal and international law enforcement agencies, and the DOT/OIG on all matters covered by this order.

(4) Coordinating FAA's efforts to combat organized crime, drug trafficking, and criminal violations involving U.S. registered aircraft and airmen.

c. SSE Managers. SSE managers have oversight and are responsible for:

(1) Initiating preliminary investigations and providing for the conduct of investigations. This authority may not be further delegated. Investigations shall be conducted in accordance with the policy provisions of this order and procedural guidelines issued by ACO-1.

(2) Referring cases or information to appropriate law enforcement elements.

(3) Assisting other FAA offices in their investigations of regulatory violations to include assistance with interviewing, statement taking, or case analysis.

(4) Serving as the official FAA liaison office for the DOT/OIG regional office; referring to the DOT/OIG all information concerning fraud, waste, or abuse; and keeping that office apprised of ongoing criminal investigations pursuant to the Inspectors General Act of 1978.

(5) Establishing and maintaining effective liaison and close working relationships with appropriate Federal, state, and local law enforcement and investigative agencies with regard to areas addressed by this order.

(6) Evaluating information of suspected violations and providing appropriate safeguards for the information.

(7) Handling requests for special investigations, judiciously exercise the allocation of investigative resources, and determine what if any investigative merit the situation may have. Determination will be based not only on the relationship of the incident to FAA employees, functions, or responsibilities but also its relationship and/or impact on other Federal, state or local agencies.

d. CAS Special Agent/Investigators. Agents conducting civil, regulatory, criminal, and Drug Investigations Support Program investigations are responsible for compliance with the following:

- (1) Conducting professional investigations in accordance with current legal standards.
- (2) Receiving evidence; examining witnesses and administering, but not compelling, oaths or affirmations at any place within the jurisdiction of the United States; and performing other duties imposed by law and regulations.
- (3) Making every effort to obtain all the relevant facts available to support or refute the issues of each case.
- (4) Consulting and coordinating with technical authorities and other elements that may have an interest or responsibility in the investigative process; e.g., Assistant Chief Counsel, Labor and Employee Relations, U.S. attorneys' offices, etc.
- (5) Limiting discussions of investigative information to those with a need to know.
- (6) Maintaining information in accordance with the provisions of the Privacy Act of 1974 or in compliance with Criminal Rules of Evidence.
- (7) Establishing early contact and coordination with FAA's office of Chief Counsel or Assistant Chief Counsel; the U.S. Attorney's office, or state and local prosecuting offices when the agent is involved in a criminal investigation. Presentation of findings both during and at the conclusion of the investigation shall be provided to the prosecuting attorney.
- (8) Establishing and maintaining effective liaison with, and providing appropriate assistance to, Federal, state and local law enforcement agencies that are engaged in the enforcement of laws relating to the regulation of controlled substances.
- (9) Obtaining data pertaining to criminal prosecutions and convictions of persons holding airman and/or aircraft certificates. As appropriate, investigative followup shall include initiation of regulatory certificate action.
- (10) Supporting criminal investigative efforts pertaining to aviation drug-smuggling activities by sharing data from FAA's system of records and conveying relevant drug trafficking analysis information.
- (11) Advising prosecuting attorneys and law enforcement agencies of criminal statutes directed at drug smuggling activities of airmen and aircraft contained within Title 49 Section 1472 et al.
- (12) Abiding by labor union agreements signed on behalf of FAA management.

10. ACS INVESTIGATIVE PROCEDURES.

a. Evaluation of Request. Upon receipt of information pertaining to suspected violations or other matters possibly warranting investigation, the SSE shall evaluate the information for jurisdiction and priority considerations. Any doubt about the authority to conduct a requested investigation shall be resolved by requesting a determination from the appropriate Assistant Chief Counsel.

b. Technical Review and Assistance. The SSE manager shall assure that the investigation has a defined objective and scope. This shall be accomplished in consultation with other FAA elements as needed in order to obtain their technical assistance. This will assure that specific facts and evidence needed to support or refute allegations are obtained during the course of the investigation.

c. Assignment of Request. After evaluation, the request shall be handled by one of the following methods:

(1) If insufficient information has been furnished, the SSE shall either decline to initiate an investigation or initiate a preliminary investigation. A preliminary investigation may be conducted to clarify jurisdiction or to better ascertain whether an investigation should be accomplished.

(2) If sufficient information has been furnished, and the SSE clearly determines the matter to be within FAA jurisdiction, an investigation will be initiated.

(3) The SSE may request that a joint investigation be conducted. Joint cases may be initiated when there is joint jurisdiction and/or when additional resources would assist in the investigative work to be accomplished. It is at the discretion of the outside agency to work with the SSE in a joint case. Joint investigations may involve the services of other FAA offices.

(4) In those cases where joint jurisdiction exists and the SSE determines that it is not possible to assign the case in a timely fashion or that the case could be more expeditiously handled by the other agency, the SSE may refer the case. If the case is accepted by the other agency, the SSE shall open a monitor case. This action is taken because the results of the investigation will affect the FAA or its employees.

(5) When information has been received regarding a suspected violation that is outside FAA jurisdiction the information will be referred, via written document, to the appropriate agency. An informational copy of such referrals will be kept on file. Notification that a referral was initiated shall be made to the FAA official requesting the investigation.

d. Acceptance or Declination of Request. If information is furnished by a management official, but the subject matter is not within the scope of any criminal, administrative, or regulatory investigative authority, the requestor shall receive written notification explaining why an investigation was not initiated.

e. Confidentiality of Information. Sources providing information will not be identified unless release of such information is authorized, whether or not anonymity is requested. In compliance with Order 3750.4, Conduct and Discipline, employees and officials shall not disclose or discuss "official use only" information which includes documents and records. This is to avoid compromise and to protect the reputations of those who may be involved. Any information concerning a suspected violation is considered for "official use only" material.

f. Parallel Proceedings. There will be occasions when a violation may be pursued in both criminal and regulatory arenas. The SSE shall communicate to the U.S. attorney those violations which are critical to air safety and the need to take expeditious regulatory action on the alleged violation(s) in addition to the criminal prosecution. The SSE shall seek the assistance of the Office of the Chief Counsel or appropriate Assistant Chief Counsel in these cases.

11. REPORTING SUSPECTED VIOLATIONS.

a. FAA Employee Responsibilities. In addition to FAA employees being responsible for reporting suspected violations of agency orders, regulations, or laws as described in this order, they are also responsible for preserving information or items of information which may relate to those suspected violations.

(1) Referral to Supervisors. Employees should report suspected violations to their immediate supervisor. Employees are encouraged to write down specific information pertaining to a suspected violation such as date, time, persons observed, location, or any description which may assist the employee in recalling the information. If a supervisory official is suspected of a violation, an employee may either report further up the supervisory chain of command or directly to the SSE.

(2) Referrals to the SSE. When an employee has a concern regarding possible or actual supervisory reprisal or inaction, the employee should report the matter to the SSE. The employee may either request to speak to the investigations branch manager or an investigator.

(3) Use of the Hotlines. Employees always have the option of referring information about a suspected violation through several hotlines made available by the FAA and DOT.

(4) Preservation of Evidence. Employees who become aware of any apparent violation should preserve any evidence they possess that bears on the alleged violation. Employees shall not take any actions on their own initiative which may interfere with an investigation. Employees shall comply with requests from appropriate officials to preserve evidence and/or release evidence. This will normally be accomplished through the SSE.

(5) Timeliness in reporting information. Employees are to provide information of suspected violations in an expeditious manner.

b. All FAA managers are responsible for:

(1) Understanding their authority to compel employees pursuant to the latest edition of Order 3750.4, Conduct and Discipline, the paragraph on Giving Testimony.

(2) Providing information on suspected criminal violations emanating from an inspection or investigation of an activity for which the manager has regulatory responsibility.

(3) Coordinating through the SSE any contact with Federal, state, and local law enforcement or investigative agencies on matters falling within the purview of this order.

(4) Providing the investigating SSE with correspondence, to be included as part of the investigative case file, that indicates what administrative, disciplinary, or other appropriate action, if any, will be taken in response to the completed ROI or EIR.

(5) Establishing when appropriate, supplemental contact with local law enforcement agencies serving their facility in cases involving theft of government property. The information concerning the theft shall also be reported to the SSE.

(6) Promptly reporting and confirming in writing without delay, any wrongdoing, actual or suspected offenses, violations, or irregularities in connection with any FAA or DOT contract, program, operation, or activity. Any known or suspected violations of criminal law or of regulations governing employee conduct or any matter affecting the national security are included in reporting responsibilities.

(7) Preserving available evidence in the possession of the manager or employee that bears on an alleged violation, limiting access to the evidence, and take no action that is otherwise prejudicial to the investigation.

(8) Conferring with the SSE to determine if a request for an investigation should be submitted.

(9) Forwarding information on suspected violations expeditiously to the SSE. If time is critical, the request for an investigation may be made orally but shall be confirmed in writing without delay.

12. REQUESTING AN INVESTIGATION.

a. Management Requests. Investigations may be requested by division level management officials or higher authority and shall be communicated to the SSE in writing.

(1) Documentation of request. Management officials shall provide a memorandum to document the request which should contain all available information that prompted the request. Information sources should be identified in the memorandum to assist the SSE with the investigative process.

(2) Verbal requests. In emergency situations a request may be accepted verbally. It is expected that a timely written request will follow. All requesting managers shall comply with this investigative requirement.

b. Other forms of Leads/Requests. The SSE's, lacking specific requests for investigations, are responsible for initiating investigations of suspected violations within the jurisdiction of ACS-1. Other means of receiving information which will cause the SSE to evaluate the need to initiate a preliminary investigation or to open an investigation include the following:

(1) Information received directly from employees who choose, either due to fear of retribution or suspected management involvement, not to go through their management officials.

NOTE: Information provided by individuals, other than those serving in a management capacity, shall be documented by the agent receiving the information.

(2) Information received via the various Department or FAA hotlines.

(3) Information received from other Government agencies.

(4) Information received from law enforcement agencies.

13. FAA SPECIAL AGENTS AS SUBJECTS OF INVESTIGATIONS. The FAA Administrator, or ACS-1 with delegated authority, will determine which option to pursue when it is necessary to open a criminal or administrative investigation having an FAA special agent as the subject of that investigation. The following options will apply:

a. Region and Center Agents. An investigation involving a special agent who is assigned to a region or center shall be conducted by investigator(s) from a different region/center or by ACO-300.

b. Headquarters Agents. An investigation involving a special agent who is assigned to headquarters shall be conducted by regional investigator(s) or referred to an outside investigative agency.

14. INVESTIGATIONS OF MANAGEMENT OFFICIALS. AOA-1 will generally use the services of ACS investigators or other investigative agencies to conduct administrative or criminal investigations of management officials. Whenever ACS's involvement in an investigation could cause the appearance of a conflict of interest, or whenever the SSE feels uncomfortable conducting an investigation, the SSE shall consult with ACS-1 through ACO-1. In such cases, ACS-1 shall determine whether alternative investigatory arrangements are necessary. In cases where ACS involvement creates a conflict of interest, ACS-1 shall make separate investigatory arrangements.

15. INVESTIGATIVE PRIORITIES. In keeping with the FAA's mission, aviation safety related issues shall receive investigative priority. When presented with several safety issues the SSE shall determine which safety issue is more imminent and direct investigative resources accordingly.

16. PREPARATION, DISTRIBUTION, AND USE OF THE REPORT OF INVESTIGATION (ROI).

a. Preparation. An ROI shall be prepared to reflect the results of any investigation initiated pursuant to this order. It shall be prepared in compliance with the latest edition of Order 1600.20, FAA Investigations Handbook. The ROI shall be protected in compliance with the latest edition of Order 1600.15, Control and Protection of "For Official Use Only" Information.

b. Distribution. The original ROI shall be retained by the investigating SSE. A copy of the ROI shall be provided to the requesting office or the office with jurisdiction, other concerned offices, and upon request to ACO-300. No further reproduction is authorized. Excluding ACO-300, all offices shall return the distributed copies to the SSE when no longer needed. Only those offices or agencies having a need to know shall be offered a copy of the ROI.

c. Use. Every attempt shall be made to collect admissible evidence. For administrative cases, the ROI shall be prepared so that it may be used as a whole document in support of a proposed adverse action.

d. Record of Third-Party Disclosure. The ROI is maintained in FAA files as a part of the FAA Investigative Record System (DOT/FAA 815). The Privacy Act requires that the FAA provide the individual whose name has been indexed with information pertaining to third party disclosure. In keeping with positive management control, FAA employees who are reading the ROI on a need-to-know basis shall complete the instructions located on the back of the front report cover, FAA Form 1600-12, which is used to comply with the Privacy Act.

17. RELEASING INVESTIGATIVE INFORMATION.

a. Privacy Act. Investigative information about individuals may be released or withheld from disclosure only as permitted under the provisions of the Privacy Act, as specified in the latest edition of Order 1280.1, Protecting Privacy of Information About Individuals. Investigative data compiled for law enforcement purposes may be exempt from the access provisions of the Privacy Act pursuant to 5 U.S.C. Sections 552a(k)(2) and (k)(5). Classified ROI's may be exempt under Section 552(k)(1). In sharing information from FAA's system of records as specified in paragraph 9d(10), FAA personnel shall do so only as the Privacy Act allows. SSE's shall seek assistance from the appropriate Assistant Chief Counsel regarding the applicability of Privacy Act exemptions.

b. Freedom of Information Act (FOIA). Certain investigative records that are compiled for civil or criminal enforcement purposes, or that contain personal and Privacy Act information about individuals, may be withheld from disclosure under 5 U.S.C. 552(b)(6) and (b)(7).

These statutory provisions have been implemented for the DOT by 49 CFR Part 7, Sections 73 and 75. Other FOIA exemptions may apply to particular investigatory materials. An SSE shall seek assistance from the appropriate Assistant Chief Counsel regarding the applicability of FOIA exemptions.

c. Press Releases. Press releases or responses to inquiries from the press concerning investigations covered by this order shall be accomplished by FAA's Public Affairs Office only. Releases shall be coordinated with the investigating SSE and the management official(s) involved. These standard procedures are in effect unless otherwise determined by AOA-1. Information covered by the Privacy Act or pertaining to an ongoing criminal investigation shall not be released. Questions shall be referred to the prosecuting attorney's office.

18. PREPARATION, DISTRIBUTION, AND USE OF THE ENFORCEMENT INVESTIGATIVE REPORT (EIR). The Office of the Chief Counsel is the primary office of interest for the latest edition of Order 2150.3, Compliance and Enforcement Program. ACS offices shall comply with the following:

a. Preparation. Regulatory investigations conducted by the SSE shall be documented using the EIR format. Procedures listed in Order 2150.3, shall be followed, to include that portion specifically addressing the civil aviation security format.

b. Distribution. Distribution of the written EIR or its computerized equivalent shall be handled in accordance with Order 2150.3.

c. Special Requirements. Special handling requirements needed for the EIR, as specified in Order 2150.3, shall be followed.

19. DOT/OIG INVESTIGATIONS/REFERRALS. The DOT Office of the Inspector General was created to act as an independent and objective investigative body to combat fraud, abuse, waste, and mismanagement of Government programs and operations. FAA employees and officials shall cooperate with the DOT/OIG in the conduct of an investigation to include testifying and providing information relating to issue(s) of fraud, waste, and abuse under investigation. In addition, special agents shall notify the appropriate DOT/OIG office prior to executing any subpoena, arrest, or search warrant. Information about suspected fraud, waste, and abuse may be sent to the DOT/OIG, P.O. Box 23178, Washington, DC 20026-0178 or by telephone using the DOT/OIG Hotline, 1-800-424-9071. The SSE, as the official liaison contact with the OIG, will forward fraud, waste, and abuse information received by the SSE, to the appropriate DOT/OIG office.


David R. Hinson
Administrator

APPENDIX 1. ADMINISTRATIVE INVESTIGATIVE MATERIAL

This is a partial list of the areas for which administrative investigations are conducted:

1. Background Investigations.

a. The Office of Personnel Management (OPM) is responsible for conducting background investigations on persons who are applying for FAA employment or who are newly-hired employees. The extent of an investigation, and whether it is conducted before or after hire, depends on the position involved. OPM also conducts background investigations under other circumstances, such as when an employee needs a higher level investigation in order to be granted a security clearance or to be placed in a position with a higher sensitivity level. Persons in certain positions must also be re-investigated every 5 years. SSE's use these investigations to make security clearance determinations, and Human Resource Management Divisions use them to adjudicate employment suitability. The latest edition of Order 1600.1, Personnel Security Program, contains the background investigation requirements and procedures.

b. OPM also conducts background investigations on certain FAA contractor employees and applicants for contractor employment in accordance with latest edition of Order 1600.1. FAA officials use these investigations to determine the individuals' suitability for contractor employment.

c. ACS often conducts supplemental investigations to follow up on information which OPM has obtained and reported to FAA. These investigations are in accordance with Title 5 U.S.C. and, Order 1600.1 specifies when SSE's will conduct them. The SSE's furnish the ROI's to those officials responsible for the suitability and security adjudication.

2. Employee Investigations. These cases may stem from questions pertaining to an employee's job qualifications or continued suitability for employment. Individuals employed by the FAA are required to conduct themselves at work and off duty in a manner that is consistent with Federal, state, and local laws and agency regulations. Information obtained by ACS that indicates these requirements are not being met may subject the employee to investigation. (These investigations are in keeping with Title 5 of the U.S. Code. Order 1600.1 and Order 3750.4, Conduct and Discipline Handbook, may be consulted for further information.)

3. Designated Representatives. Non-FAA employees designated by the various FAA offices may be investigated regarding their continued suitability or qualifications to carry out responsibilities delegated to them by the various FAA offices. The Flight Surgeon, the Flight Standards Service, and others having the authority to allow non-FAA persons to carry out some FAA tasks in their respective fields, may request investigative assistance when questionable behavior or actions arise concerning the designated representatives.

APPENDIX 2. REGULATORY INVESTIGATIVE MATERIAL

Regulatory investigations involve alleged violations of Title 14 and Title 49 CFR. Numerous offices within the FAA have responsibility regarding compliance with various sections of 14 CFR. The following sections are the most common areas addressed by the SSE in the conduct of regulatory investigations and are not meant to be all inclusive.

1. Airmen. Allegations of drug or alcohol abuse by airmen should be referred to the SSE. It is not unusual for a regulatory investigation to surface both criminal and regulatory violations or vice versa. One such example is the falsification of airmen medical applications (14 CFR Part 67, Section 20) to conceal recent Driving While Intoxicated convictions.

2. Airmen or Aircraft. The following are potential violations normally brought to the attention of ACS when found by Federal or state agencies investigating criminal actions or violations involving either airmen or aircraft.

- a. Operation of an aircraft without a valid certificate.
- b. False markings on an aircraft.
- c. Aircraft registration irregularities.
- d. Unapproved aircraft fuel system.

3. FAA Sections 609(c). The SSE's are specifically responsible for regulations pertaining to the carriage of drugs and drug-related convictions of airmen. This section gives the Administrator the authority to revoke the airman certificate of any person upon conviction of a crime punishable by death or imprisonment for a term exceeding one year relating to a controlled substance.

4. Hazardous Materials. Violations of the Hazardous Materials Act (Public Law 93-633, as amended) are investigated by ACS on behalf of the FAA. Responsibility for the aviation related activities of this Act have been delegated to FAA by the Secretary of Transportation.

APPENDIX 3. CRIMINAL INVESTIGATIVE MATERIAL

Section 902 of the FAA Act (49 U.S.C. 1472), as amended, sets forth aviation-related crimes, several of which fall within the jurisdiction of ACS-1. It is not uncommon for Federal criminal issues to be developed as a result of an FAA regulatory inspection or investigation. The following list is not intended to be all inclusive of the statutes for which an FAA criminal investigation might be conducted.

1. Title 49 U.S.C., Section 1472 (The Federal Aviation Act, (FAA Act) of 1958). Section 1472 provides criminal sanctions for a series of acts or activities inimical to aviation safety. Some are specifically assigned and investigated by the FBI. The remaining violations are the responsibility of the FAA. The following are very brief descriptions of those subsections:

- a. Section 1472(a). Any person who knowingly and willfully violates any provisions of the FAA Act (except Titles III, V, VI, VII, and XII) not otherwise provided for shall be deemed guilty of a misdemeanor.
- b. Section 1472(b). Forgery of certificates and false marking of aircraft.
- c. Section 1472(c). Interference with air navigation.
- d. Section 1472(d). Granting or receiving rebates.
- e. Section 1472(e). Failure to file reports; falsification of records.
- f. Section 1472(f). Divulging information.
- g. Section 1472(g). Refusal to testify.
- h. Section 1472(h). Hazardous materials.
- i. Section 1472(p). Interference with aircraft accident investigation.
- j. Section 1472(q). Lighting violation in connection with transportation of controlled substances.

2. Title 49 U.S.C. Section 1809. This section provides for criminal penalties (under Title 18) when violations of the Hazardous Materials Act are knowingly committed. (49 U.S.C. Section 1472h).

3. Title 18 U.S.C. Some of the common Title 18 violations which may be involved in FAA investigations.

- a. 18 U.S.C. 1001, Knowingly providing false information to a Federal agency.

b. 18 U.S.C. 32, Addresses sabotage, destruction, or disruption of an aircraft or aircraft facility.

c. 18 U.S.C. 641, Embezzlement of public money, property or records.

d. 18 U.S.C. 1719, Franking Privilege.

e. 18 U.S.C. 1341, Mail Fraud.

f. 18 U.S.C. 1905, Disclosure of confidential information.

g. 18 U.S.C. 930, Possession of dangerous weapons in Federal facilities.

4. Other Titles.

a. 31 U.S.C. 1349(b), Misuse of a government vehicle.

b. 5 U.S.C. 7351, Soliciting funds for and/or giving gifts to an official supervisor.